

Congress of the United States
Washington, DC 20515

October 9, 2003

Dear Colleague,

In recent days you may have received correspondence from brewing interests asking you to comment in favor of a proposal by the Alcohol, Tobacco Tax and Trade Bureau at the Department of Treasury (TTB) to change the formulation and tax treatment of flavored malt beverages (FMBs). Before you agree to submit any comments, we urge you to consider the rest of the story.

For more than thirty years, the BATF (predecessor of the TTB) permitted products classified as "beer" and "malt beverages" to contain alcohol from flavors. Since the late 1980s, the ATF allowed brewers to create non-conventional beers that derived most of their alcohol from flavors, as long as those products contained less than 6% alcohol by volume - the same strength as conventional beers.

Over the last five years, with a reliance on Federal regulations, hundreds of millions of dollars have been invested in the creation of FMBs which current regulations treat as beer for tax purposes. The TTB oversaw and regulated producers during much of this growth in the industry. They approved the formulas, labels, and marketing practices utilized by numerous brands.

Then, on March 20, 2003, the TTB issued Notice Number 4, which would limit to only 10% the total alcohol level that may be derived from flavors, in order for FMBs to be treated as beer for tax purposes. This 90% malt formulation standard is the most stringent standard that could be required of those wishing to manufacture popular FMB's. This rule is not seeking to increase or decrease the amount of alcohol in the product -just the source. As a result, the TTB seemingly intends to pull the rug out from under those companies that successfully created the category, and hand a distinct advantage to companies whose products have struggled in the marketplace.

If finalized, the more stringent standard note favored in the notice will jeopardize jobs, increase consumer pricing, and limit consumer choice. Any one of these is bad, but all three together is unacceptable.

Fortunately, the proposed rule **also** solicits comments on other approaches, including one requiring that only a simple majority of a product's alcohol derive from malt. One such alternative recognizes that the statutes governing beer would allow for a formulation at anything above 50% malt. This "majority standard" approach is a fair compromise supported by the manufacturers of the leading products in the FMB category.

If you decide to comment, I would urge you to comment in support of majority standard. It is a fair compromise that truly keeps a level playing between all interests.

Thank you for your consideration,

DAVID DREIR

PAT TOOMEY

JERRY WELLER

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